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16
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18

19 UNITED STATES DISTRICT COURT
20
21 DISTRICT OF NEVADA

22
23 DIAMOND RESORTS CORPORATION, a
24 Maryland corporation; DIAMOND
25 RESORTS HOLDINGS, LLC, a Nevada
limited liability company; and DIAMOND
RESORTS INTERNATIONAL, INC., a
Delaware corporation,

26 Plaintiffs,

27 vs.

28 KYLE BROWN, an individual; MARTIN
BROWN, an individual; EXCHANGE
POINTS CLUB, LLC, a Florida and
Missouri limited liability company;
PREMIER REWARDS LLC, a Missouri
limited liability company; VMG RESORTS
LLC, a Missouri limited liability company;
VACATION MANAGEMENT GROUP,
LLC, a Missouri limited liability company;
and OWNER EXTRAS LLC, a Missouri
limited liability company,

Defendants.

Case No.:

COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF

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For their complaint, Plaintiffs Diamond Resorts Corporation, Diamond Resorts Holdings, LLC, and Diamond Resorts International, Inc. (collectively, "Diamond"), through their attorneys Ballard Spahr, LLP, allege as follows:

NATURE OF ACTION

1. This is an action for trademark infringement, false designation of origin, and false advertising under the Lanham Act, 15 U.S.C. §§ 1114, 1125(a)(1), as well as for deceptive trade practices under Nevada's Deceptive Trade Practices Act, Nev. Rev. Stat. §§ 598, 598A et seq, and common law conversion.

2. Diamond is a collection of interrelated businesses that market and sell timeshare interests, manage resorts and multi-resort trusts, and operate points-based vacation clubs. Diamond is a global leader in the hospitality industry and one of the largest independent-branded vacation ownership businesses in the country. It is the owner of multiple marks in connection with those activities, including, as relevant here, the mark “DIAMOND RESORTS®,” and the mark “THE CLUB®.”

3. In tandem with its hospitality and management services, Diamond's core business is the marketing and sale of timeshare interests to persons who want access to a vacation-ownership program ("Timeshare Program") that provides flexibility in terms of the location, season and duration of their vacation. The purchasers of those timeshare interests ("Collection Members" or "Members") acquire, through their purchase, "Points," which act as currency that is exchangeable for occupancy rights in accommodations at resorts within their Timeshare Program and at other Diamond-affiliated resorts (collectively, the "Resorts").

4. Defendants Kyle Brown and Martin Brown are, upon information and belief, the sole principals behind the five business-entity Defendants: Exchange Points LLC, PR Rewards LLC, VMG Resorts LLC, Vacation Management Group LLC, and Owners Extras, LLC (collectively, “Defendants”). The Browns’ businesses are related to a particular segment of the timeshare industry called “exchange networks,” which provide a mechanism for timeshare owners to use their timeshare

1 interests for something other than vacation stays at accommodations within their
 2 own timeshare program. *Some* exchange networks run perfectly legitimate
 3 businesses, which, with the cooperation and authorization of the timeshare
 4 companies, permit timeshare owners to reserve accommodations outside of their
 5 particular timeshare program. The Browns' businesses, however, are *not* legitimate.

6 5. On the contrary, Defendants have engaged in deceptive and illicit
 7 schemes designed to profit at the expense of Diamond and Collection Members. As
 8 explained in detail below, those schemes have involved an ongoing campaign of
 9 telephonic advertisements, in which, making use of Diamond's marks and other
 10 deceptive means to falsely suggest affiliation with Diamond, Defendants have
 11 attempted to trick Collection Members into turning over control of their Points to
 12 Defendants in direct violation of the governing documents for their Timeshare
 13 Program. Defendants are then using Members' Points to reserve Resort
 14 accommodations for *their* customers, employing Diamond's marks and other
 15 misleading representations in order to falsely hold themselves out as authorized
 16 wholesale distributors of vacation stays at the Resorts. And, to make matters worse,
 17 Defendants are charging Collection Members a substantial up-front fee for the
 18 "service" of renting out their Points on their behalf, even though Defendants have no
 19 authorization to rent out anyone's Points, and, upon information and belief,
 20 Defendants end up returning little, if any, of the proceeds from those unauthorized
 21 transactions back to the Collection Member.

22 6. Defendants' willful and dishonest schemes have caused, and are
 23 continuing to cause, substantial and immediate harm to Diamond. First, by
 24 misappropriating Diamond's marks to falsely suggest affiliation with Diamond, and
 25 making false representations to Collection Members about what they can do with
 26 their Points, Defendants are irreparably disrupting Diamond's relationship with
 27 Collection Members, who are being scammed out of money by a company they believe
 28 to be affiliated with Diamond, as well as fundamentally misled about the nature of

1 their Timeshare Program. Second, by using Members' Points to reserve Resort
2 accommodations for *their* customers, Defendants are diverting vacationers away from
3 Diamond, who otherwise could gain access to such accommodations only through
4 Diamond. Third, Diamond has had to expend significant resources investigating
5 Defendants' schemes, as well as attempting to counteract the effects of those schemes
6 on Diamond's business reputation.

7 7. Thus, Diamond seeks relief from this Court in the form of an
8 accounting, monetary damages consisting of disgorgement of all of Defendants' ill-
9 gotten gains, attorneys' fees, and – most importantly – preliminary and permanent
10 injunctive relief barring Defendants from continuing to carry out their schemes.

PARTIES, JURISDICTION AND VENUE

A. The Plaintiffs

13 8. Plaintiff Diamond Resorts Corporation (“DRC”) is a Maryland
14 corporation with its principal place of business located at 10600 West Charleston
15 Boulevard, Las Vegas, Nevada 89135. DRC is the parent company and sole owner of
16 all of Diamond’s “development entities,” which are the business entities that enter
17 into contracts with Collection Members for the purchase and sale of Points. Because
18 DRC is the 100% owner of all of Diamond’s development entities, it ultimately
19 subsumes all the losses incurred by its underlying development entities, including, as
20 relevant here, all losses caused by Defendants’ scheme.

21 9. Plaintiff Diamond Resorts Holdings, LLC (“DRH”) is a limited liability
22 company organized under the laws of the State of Nevada with its principal place of
23 business located at 10600 West Charleston Boulevard, Las Vegas, Nevada 89135. It
24 is the parent company of DRC, and the owner of all of the Diamond marks at issue in
25 this lawsuit.

26 10. Plaintiff Diamond Resorts International, Inc. (“DRI”) is a Delaware
27 corporation with its principal place of business located at 10600 West Charleston

1 Boulevard, Las Vegas, Nevada 89135. DRI is the parent company and sole owner of
2 DRH.

3 **B. The Defendants**

4 11. Defendant Kyle Brown is an individual who resides in the State of
5 Missouri. Upon information and belief, he, along with Defendant Martin Brown, are
6 the architects behind the business-entity Defendants, and the illicit schemes
7 described herein.

8 12. Defendant Martin Brown is an individual who resides in the State of
9 Missouri. Upon information and belief, he, along with Defendant Kyle Brown, are
10 the architects behind the business-entity Defendants, and the illicit schemes
11 described herein.

12 13. Defendant Exchange Points Commission, LLC (“Exchange Points”) is
13 registered as a limited liability company in both the State of Florida and the State of
14 Missouri. Its Florida registration lists its address as 6965 Piazza Grande Avenue,
15 #218, Orlando, Florida 32835, and identifies Kyle Brown as its manager. Attached
16 hereto as **Exhibit 1** is a true and correct copy of Exchange Points’ Florida Annual
17 Report for 2018. Exchange Points’ Missouri registration lists its principal place of
18 business as 22 Gravois Station, House Springs, Missouri 63051, and identifies Kyle
19 Brown as its organizer. Attached hereto as **Exhibit 2** is a true and correct copy of
20 Exchange Points’ Missouri Articles of Organization.

21 14. Defendant Premier Rewards LLC a/k/a PR Rewards (“PR Rewards”) is a
22 Missouri limited liability company. Like Exchange Points, it lists its principal place
23 of business as being at 22 Gravois Station, House Springs, Missouri 663051. Upon
24 information and belief, its only two members are Defendants Martin Brown and Kyle
25 Brown. The Articles of Organization for PR Rewards list its email address as
26 “exchangepointsclub@gmail.com,” which is the same email address listed for
27 Exchange Points in its Articles of Organization. Attached hereto as **Exhibit 3** is a
28 true and correct copy of Premier Rewards’ Articles of Organization. PR Rewards

1 appears to have recently changed its name to Member Perks LLC, but the publicly
 2 available organizational documents indicate that it remains the same legal entity.

3 15. Defendant VMG Resorts LLC (“VMG Resorts”) is a Missouri limited
 4 liability company with its principal place of business located at 10650 Keystone
 5 Drive, Blackwell, Missouri 63626. Upon information and belief, its sole member is
 6 Defendant Martin Brown. Attached hereto as **Exhibit 4** is a true and correct copy of
 7 VMG Resorts’ Articles of Organization.

8 16. Defendant Vacation Management Group, LLC (“Vacation Management
 9 Group”) is a Missouri limited liability company. Like Exchange Points and PR
 10 Rewards, it lists its principal place of business as 22 Gravois Station, House Springs,
 11 Missouri 663051. Vacation Management Group is the parent company of both PR
 12 Rewards and VMG Resorts. Upon information and belief, Vacation Management
 13 Group’s sole member is Defendant Martin Brown. Attached hereto as **Exhibit 5** is a
 14 true and correct copy of Vacation Management Group’s Statement of Change of
 15 Business Office Address.

16 17. Defendant Owner Extras LLC (“Owner Extras”) is a Missouri limited
 17 liability company. Like Exchange Points, PR Rewards, and Vacation Management
 18 Group, it lists its principal place of business as 22 Gravois Station, House Springs,
 19 Missouri 663051. Upon information and belief, Owners Extras’ sole member is Kyle
 20 Brown. The Articles of Organization for Owners Extras list its email address as
 21 being “info@vmgresorts.com,” which is the same email address listed for VMG
 22 Resorts in its Articles of Organization. Attached hereto as **Exhibit 6** is a true and
 23 correct copy of Owner Extras’ Articles of Organization.

24 C. **Jurisdiction and Venue**

25 18. This Court has subject matter jurisdiction over this matter under 28
 26 U.S.C. § 1332 because there is complete diversity of citizenship between Plaintiffs
 27 and Defendants and the amount in controversy exceeds \$75,000.

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19. Alternatively, this Court has subject matter jurisdiction over the claims grounded in the Lanham Act under 28 U.S.C. § 1331 and 28 U.S.C. § 1338(a), and can exercise subject matter jurisdiction over the Nevada state law claims pursuant to 28 U.S.C. § 1337(a), as those claims are so related to the claims asserted under federal law as to form part of the same case or controversy.

20. This Court may properly exercise personal jurisdiction over Defendants because this action arises out of Defendants' purposeful contacts with the State of Nevada, including their (a) directing infringing advertising and promotional communications at Nevada residents, (b) engaging in schemes designed to divert sales from Plaintiffs, which are businesses located and/or incorporated in Nevada, (c) holding themselves out as affiliated with Plaintiffs, which are businesses located and/or incorporated in Nevada, (d) wrongfully converting Plaintiffs' and their affiliates' exclusive right to engage in the commercial rental of Resort accommodations through the use of Points under the governing documents for the Collections, which are businesses located and/or incorporated in Nevada, and (e) engaging in schemes executed in significant part by deceptively gaining access to Collection Members' online owner portal accounts, which are hosted and managed by a Diamond affiliate in Nevada ("Member Portal Accounts").

21. Venue is proper in this Court pursuant 28 U.S.C. § 1391(b)(2) because, as described above and below, a substantial part of the events giving rise to Diamond's claims took place in this District.

FACTS COMMON TO ALL COUNTS

A. The Diamond Marks

22. Since its founding in 1996, Diamond has grown into one of the largest and well-known hospitality companies in the world, with more than 109 properties that are part of the Collections (as defined below), managed by Diamond affiliates, or otherwise Diamond-branded, and 268 affiliated resorts and hotels throughout the continental United States and Hawaii, Canada, Mexico, the Caribbean, Europe, Asia,

1 Australia, and Africa. Presently, Diamond provides hospitality services to more than
 2 400,000 Members worldwide.

3 23. A crucial part of Diamond's success has been building up the Diamond
 4 brand. During its more than two decades of existence, Diamond has invested
 5 considerable time and expense in marketing its brand, including its associated
 6 marks, to establish wide-spread recognition of, and goodwill for, the Diamond brand
 7 among the consuming public, including Collection Members.

8 24. Diamond's timeshare and hospitality programs are all marketed under
 9 Diamond's marks, which DRI owns through its wholly owned subsidiary DRH. These
 10 include various marks incorporating the word "Diamond®," as well as the mark "The
 11 Club®," which, as explained below, Diamond uses to denote certain specific Member
 12 exchange programs and services that it offers.

13 25. As relevant here, Diamond's marks (the "Diamond Marks") include the
 14 following federally registered marks:

<u>Registration Number</u>	<u>Trademark</u>	<u>Registration Date</u>	<u>Description of Good and/or Services</u>
2,411,329	DIAMOND RESORTS INTERNATIONAL	December 5, 2000	IC 042: Hotel Services.
2,432,190	DIAMOND RESORTS INTERNATIONAL	February 27, 2001	IC 036: Real estate time sharing services.
3,746,815	DIAMOND RESORTS	February 9, 2010	IC 036: real estate equity sharing, namely, managing and arranging for co-ownership of real estate; real estate time-sharing; vacation real estate time share exchange services; vacation real estate time-sharing.

<u>Registration Number</u>	<u>Trademark</u>	<u>Registration Date</u>	<u>Description of Good and/or Services</u>
4,361,959	DIAMOND RESORTS INTERNATIONAL	July 2, 2013	IC 035: Real estate sales management; managing and operating hotels of others.
4,805,164	DIAMOND PLUS POINTS	September 1, 2015	IC 035: Incentive programs for credit card users, namely, providing gift cards, merchandise, and travel awards for credit card use as part of a customer loyalty program. IC 036: Credit card services; incentive programs for credit card users, namely, providing cash and rebates for credit card use as part of a customer loyalty program.
3,566,128	THE CLUB	January 20, 2009 <u>Date of First Use:</u> September 30, 2007	IC 36: Real estate equity sharing, namely, managing and arranging for co-ownership of real estate; Real estate services, namely, rental of short-term furnished apartments; Real estate time-sharing; Vacation real estate time share exchange services; Vacation real estate time-sharing; Vacation real estate timeshare

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<u>Registration Number</u>	<u>Trademark</u>	<u>Registration Date</u>	<u>Description of Good and/or Services</u>
			services.

True and correct copies of each of the foregoing registrations are attached hereto as **Exhibits 7-12.**

26. The Diamond Marks are distinctive and signify to the consuming public, including Collection Members, that products and services that come from Diamond are reliable, trustworthy, and of high quality.

27. Diamond uses the Diamond Marks in its advertising and promotional materials, including its website, its brochures and catalogues, and its print and online advertising. In addition, Diamond uses the Diamond Marks in its communications with Collection Members to signal that the communication is coming from Diamond.

B. The Timeshare Programs

28. Diamond's operations consist of two interrelated businesses: (a) timeshare interest sales and financing, which includes the marketing and sale of timeshare interests and consumer financing for Collection Members; and (b) hospitality and management services, which includes management of resort properties and trusts, operation of vacation ownership clubs and resort amenities, and the provision of other hospitality and management services.

29. A Collection Member typically receives an annual or bi-annual allotment of Points in exchange for its payment of the purchase price.¹ That Member is then able to use their Points to reserve accommodations at the Resorts or to

¹ Diamond also offers non-timeshare trial packages called "Samplers," which do not come with renewable Points, but rather one-time use points that expire after a set period.

1 reserve accommodations or book other travel-related benefits outside of their
 2 Collection if the Collection Member is a member of an exchange program.

3 30. Members purchase Points in specific “Collections,” each of which
 4 constitutes an independent Timeshare Program that includes multiple resort
 5 locations. For instance, a Member could purchase Points within the Diamond
 6 Resorts U.S. Collection, in which case that Member would be able to use their Points
 7 to reserve vacation stays at Resorts within that Collection, which are located
 8 throughout the continental United States, as well as St. Maarten.

9 31. Within each Timeshare Program, Points are personal to the Collection
 10 Member. That is, Collection Members use their Points through their particular
 11 membership accounts, usually reserving their vacation stays online through their
 12 Member Portal Account. As part of that system, Collection Members are not
 13 permitted to employ their Points for a commercial – rather than personal – use.
 14 Collection Members can, however, permit their “guests” – *i.e.*, friends and family – to
 15 enjoy vacation stays at the Resorts via their Points, provided that the Collection
 16 Member personally makes the reservation with his or her own Points, and then
 17 provides the names of the guests who will be using the reservation.

18 32. As part of their membership, each Collection Member is required to pay
 19 annual maintenance fees. These fees cover operating expenses and capital reserves
 20 for the Members’ Collection, including, but not limited to, operation of the
 21 reservation system; Member publications; independent exchange program affiliation
 22 fees; invoicing and collecting maintenance fees; providing administrative services;
 23 assessments levied by owners associations for Resorts within the Collection;
 24 maintenance, repair modification, alteration, redecoration or replacement of each
 25 Collection accommodations, the furnishings therein, and the common areas of
 26 Resorts within the Collection; insurance coverage; capital contributions for reserves;
 27 domestic services, including cleaning and maid service; noticing and conducting
 28 association meetings; and obtaining management, accounting, legal, or other

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1 professional services. The fees are paid directly to the non-profit members
 2 association for that Member's Collection.

3 33. In addition, Members have access to "exchange networks." For instance,
 4 Diamond has an internal exchange network called "The Club®," a name that
 5 Diamond has trademarked for that purpose. That program allows Collection
 6 Members to exchange their Points to reserve accommodations outside of their
 7 Collection, as well as for other travel-related benefits, such as cruises.

8 34. There are also independent exchange companies outside of Diamond,
 9 which allow timeshare owners to trade their timeshare interests within their
 10 timeshare program for rights to reserve accommodations within other timeshare
 11 programs. The two most prominent independent exchange companies are Interval
 12 International ("II") and Resort Condominiums International ("RCI"). II is currently
 13 an authorized exchange network for the Diamond Collections through an affiliation
 14 agreement between The Club® and II. That means that Collection
 15 Members participating in The Club® are able to exchange their Points through II for
 16 rights to reserve accommodations in other cooperating timeshare programs. RCI is
 17 not currently an authorized exchange network for Collection Members, but it is for
 18 other timeshare programs, and is well known throughout the industry.

19 35. Finally, when Diamond has access to unsold or otherwise unused
 20 inventory at the Resorts, it will attempt to rent such inventory to persons who are
 21 not Collection Members or use such inventory for other sales and marketing purposes
 22 Collection Members may also rent one-time-use Points from Diamond for purposes of
 23 specific vacation plans in any given year.

24 36. Thus, to be permitted to stay at accommodations that are part of a
 25 Collection, a person must be one of the following: (a) a Collection Member (or a
 26 permitted guest or family member of a Collection Member), (b) an owner of a
 27 different timeshare interest who reserved accommodations at a Resort through an
 28

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1 exchange program, or (c) someone who rented accommodations directly from
 2 Diamond.

3 **C. Defendants' Unlawful Schemes**

4 37. Diamond has recently discovered that Defendants have been engaged in
 5 various schemes in which they sell and facilitate access to accommodations within
 6 the Resorts to their customers, even though Defendants are not, in fact, authorized to
 7 do so, and the persons to whom they are selling and facilitating this access are not
 8 permitted users of such Resort accommodations.²

9 38. Because the principal means of reserving stays at the Resorts – Points –
 10 are in the hands of Collection Members, who are not permitted to rent those Points
 11 for commercial purposes, Defendants' schemes hinge on their ability to trick
 12 Collection Members into giving Defendants control of their Points. Thus, Defendants
 13 have engaged in a campaign of misleading telephonic advertisements to Collection
 14 Members designed to obtain control of their Points.

15 39. Although, as set forth below, the details of those sales calls vary, the
 16 basic structure of the sales pitch remains the same. During the call, a representative
 17 from one of the Defendants purports to be calling *about* the Member's Collection
 18 account with Diamond. In some of the instances of which Diamond presently aware,
 19 the caller has explicitly and falsely represented that he or she is affiliated with
 20 "Diamond" or "The Club" (which is operated by a Diamond affiliate) or the equity
 21 sponsors of Diamond. In other such instances, the caller has falsely represented that
 22 he or she is affiliated with "II" or "RCI," or made some other misleading
 23 representation. In all such known instances, however, the caller has falsely
 24 represented himself or herself as someone in rightful possession of insider knowledge
 25 of the details of the Collection Member's account (and, in many cases, insider
 26

27 2 Defendants also appear to be selling and facilitating occupancy at vacation
 properties associated with timeshare companies other than Diamond.
 28

1 knowledge about purported *problems* with the account), as well as someone who can
 2 make representations to Collection Members about what they can and cannot do with
 3 their Points.

4 40. After falsely representing to the Collection Member that he or she is
 5 affiliated with Diamond (or else affiliated with an entity, such as II or RCI, which
 6 conceivably *might* be authorized to serve as a legitimate exchange company for the
 7 deposit of Points), the caller then proposes the following transaction: the caller's
 8 company will rent the Member's Points, in exchange for an up-front broker's fee, and
 9 then, when the Member receives its portion of the proceeds from those transactions,
 10 it can then apply the proceeds to its maintenance fees. To complete the proposed
 11 transaction, the Member is required not only to pay the up-front fee, but also to give
 12 over the password and other log-in details to his or her Member Portal Account,
 13 permitting Defendants to use that account to reserve accommodations at the Resorts
 14 on behalf of *their* customers.

15 41. Thus, Defendants' schemes have two parts. First, Defendants have
 16 gained access to Resort accommodations by falsely representing themselves to
 17 Collection Members as authorized to rent their Points on their behalf, and
 18 advertising to them programs in which Defendants will rent their Points for a fee.
 19 Second, Defendants are providing their customers with access to Resort
 20 accommodations, falsely holding themselves out as authorized wholesalers of such
 21 accommodations, and using access to the Member Portal Account and control of their
 22 Points to make reservations they are providing to their customers.

23 42. As explained below, the first part of the scheme appears to be carried
 24 out primarily by Exchange Points, PR Reward, and Owner's Extras, while the second
 25 part of the scheme is carried out by VMG Resorts and Vacation Management Group.

26 43. On information and belief, all of the conduct described herein by those
 27 entities described herein has been carried out at the personal direction of Defendants
 28 Kyle Brown and Martin Brown.

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1 i. *Defendants' Websites*

2 44. Though, as described below, much of Defendants' schemes have involved
 3 telephone solicitations of Collection Members that Defendants no doubt intended to
 4 remain secret, some of it has been conducted out in the open on their websites.

5 45. For instance, until it was recently changed in response to a cease-and-
 6 desist letter from Diamond, the promotional website for Exchange Points laid out
 7 both parts of the company's scheme. The website included a page describing what it
 8 calls its "Maintenance Reimbursement Program" for timeshare owners. That page
 9 stated that: "For Club owners that already have Points or can't use them, enrolling
 10 as a Club member will save you more than ever. As long as you are an active Club
 11 member, you can deposit any of your Points that you will not use and the Club will
 12 pay you for your maintenance fees on those points!" In addition, page used
 13 Diamond's marks to falsely imply that Exchange Points is an authorized depository
 14 for Points, referencing a "Diamond VIP Member Payout" and a program called "Club
 15 Diamond" that "price matches your original maintenance fees." A true and correct
 16 screen shot of that page of Exchange Points' webpage is attached hereto as **Exhibit**
 17 **13.**

18 46. The other end of the scheme, where Exchange Points sells and
 19 facilitates access to Resort accommodations to *its* customers, was made clear on a
 20 separate page of the Exchange Points website labeled "Exchange Points Club |
 21 Getting Started." That page stated that "Exchange Points Club delivers this
 22 exclusive Club membership package, where you are able to get the Points, travel
 23 deals, member benefits, and exceptional prices without having to own vacation
 24 property. *By enrolling in a Club membership, you get all of the benefits, discounts*
 25 *and inventory available to timeshare owners without having to own a timeshare.*" A
 26 true and correct screen shot of that page of Exchange Points' webpage is attached
 27 hereto as **Exhibit 14**. The "FAQ" page of the Exchange Points website also made this
 28 clear, stating that it "is able to provide customers these Points packages and benefits

1 without all of the costs and obligations that come from buying a timeshare.” A true
 2 and correct screen shot of that page of Exchange Points’ webpage is attached hereto
 3 as **Exhibit 15**.

4 47. The website for PR Rewards also advertised a program for renting
 5 Points, until it was likewise changed in response to Diamond’s cease-and-desist
 6 letter. Its home page prominently featured the “Diamond Resorts” logo, and touted
 7 that it is “currently managing” roughly 1.8 million Points. The website further
 8 stated that: “We guarantee that your points/weeks will be rented and you will be paid
 9 for your points/weeks in a timely manner.” In addition, the website offered three
 10 tiers for Collection Members: “Silver,” where the Member supposedly gets “50%” of
 11 all rental proceeds, “Gold,” where the Member supposedly gets “55%” of all rental
 12 proceeds, and “Platinum,” where the Member supposedly gets “60%” of all rental
 13 proceeds. A true and correct screen shot of the PR Rewards homepage is attached
 14 hereto as **Exhibit 16**.

15 48. While PR Rewards does not itself appear to be selling and facilitating
 16 access to accommodations within the Resorts, that role is being performed by VMG
 17 Resorts through Vacation Management Group. Vacation Management Group is the
 18 owner of both PR Rewards and VMG Resorts, as indicated on its website, a true and
 19 correct screen shot of which is attached hereto as **Exhibit 17**. VMG Resorts holds
 20 itself out as a “vacation resort wholesaler offering member exclusive resorts to the
 21 general public at a fraction of the cost,” as indicated on its website, a true and correct
 22 screen shot of which is attached hereto as **Exhibit 18**.

23 49. Many of the accommodations that are offered through the VMG Resorts
 24 website are part of the Resorts. For instance, the below images are of Resorts
 25 included in listings on the VMG Resorts website:

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ii. *Defendants' Telephonic Advertisements*

50. The part of Defendants' scheme where they have obtained control of Collection Members' Points has been primarily conducted through misleading telephonic advertisements directed at Collection Members.

51. The bulk of the telephone solicitations of which Diamond is presently aware have come from the number "844-385-0276," which Exchange Points lists as

1 its phone number on its website. Some Collection Members have, however, received
 2 calls originating from Owners Extras and PR Rewards.

3 52. In these telephone solicitations, Defendants have attempted to enroll
 4 Collection Members in two programs: “Maintenance Fee Reimbursement” and “Club
 5 Elite” programs. Both of those programs involve the Member (a) paying an up-front
 6 membership fee, and (b) depositing his or her Points with Defendants in exchange for
 7 a promise of payment to be applied to that Member’s maintenance fees.

8 53. Attached hereto as **Exhibit 19** is a true and correct copy of a form
 9 Agreement that has been furnished to multiple Collection Members, with the specific
 10 identifying information redacted. As relevant here, the agreement provides as
 11 follows:

12 a. While Exchange Points “will handle all details involved with the
 13 rentals, including but not limited to; advertising, receiving incoming calls and emails,
 14 checking availability, [and] pricing reservations,” the Collection Member’s role is
 15 “*simply [to] provide the required points and guest certificates for the reservations.*”
 16 In other words, the Collection Members who enter into this agreement are required
 17 to supply Exchange Points with not only access to their Points, but also “guest
 18 certificates” to permit the persons Exchange Points uses the Points to make
 19 reservations for to check-in at the Resort.

20 b. In addition, the agreement forbids the participating Collection
 21 Member from cancelling a reservation that Exchange Points makes through the
 22 Member’s account, and also requires the Member to notify Exchange Points if the
 23 Member gets into a dispute with Diamond that could lead to that Member losing
 24 access to his or her account. In particular, the agreement states that “if we are
 25 locked out of your account due to non-payment or dispute with Diamond, this
 26 agreement will be null and void, and owner could be liable for damages on lost guest
 27 reservations. *Always notify us in advance of any dispute with Diamond, so we can*
 28 *move our reservations out of your account.”*

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1 c. The agreement also requires the Member to give Exchange Points
 2 control of his or her Member Portal Account, stating: “*Upon payment of the sums set*
 3 *forth above to Owner, the Exchange Points Club shall have the right to access*
 4 *Owner’s Account within the reservation/points system maintained by Diamond for*
 5 *the purpose of making reservations and rentals, communicating with Diamond and*
 6 *otherwise transacting all business related to the Points as the Owner would.*”

7 d. The agreement requires the participating Collection Member to
 8 pay Exchange Points \$1,495 in order to enroll in the “Maintenance Fee
 9 Reimbursement” program.

10 e. Finally, the agreement states that “Club member understands
 11 that the Maintenance Reimbursement is handled solely by Exchange Points Club.
 12 **NOT AN RCI/Diamond PRODUCT.**” That is the only indication Exchange Points
 13 provides that it is not affiliated with either Diamond or RCI. Up to that point in the
 14 sales transaction, Exchange Points leads the Collection Members to believe that the
 15 programs being offered are sponsored by, or otherwise affiliated with, Diamond.

16 54. Though the sales calls Collection Members have received from
 17 Defendants have all centered on a proposal for reimbursement for the Members’
 18 Points, they have varied in *who* the caller has claimed to be affiliated with.
 19 Collection Members have received calls purporting to be coming from (a) “Diamond,”
 20 (b) “Diamond Resorts,” (c) “Member Services with Diamond Resorts,” (d) “The Club,”
 21 (e) “Club Services regarding your Diamond Points account,” (f) “Diamond’s Travel
 22 Services Department,” (g) “Owner’s Extras for Diamond,” (h) “Interval International,”
 23 (i) “RCI,” (j) “RCI Points,” and (k) various entities supposedly affiliated with
 24 Diamond’s equity sponsors. In one instance, a Collection Member was contacted by
 25 someone at the Exchange Points number purporting to be from “RCI Services,” who
 26 later connected her with someone who described himself as her “Diamond
 27 Counselor,” and falsely explained that the programs he was offering were new to
 28 Diamond and had come about as a result of changes in Diamond’s ownership

1 structure. All of those representations of affiliation with an entity other than
 2 Exchange Points were false.

3 55. In other sales calls to Collection Members, Defendants' salespeople have
 4 implied that the caller was not only affiliated with Diamond, but calling about a
 5 specific problem with that Collection Member's account. Thus, multiple Members
 6 have received such calls purporting to be from "The Club" or "RCI" in which the
 7 caller has claimed to be calling about an "issue" with the Member's account, and, in
 8 particular, the fact that the Member has not been using all of his or her Points. And,
 9 multiple Collection Members have been left official-sounding voicemail messages
 10 from someone at the Exchange Points number, which have stated: "This is [name]
 11 from Club Services calling regarding your Points account. We have a couple of
 12 notices here."

13 56. The purpose of these false representations is to confuse the Collection
 14 Member into believing that the proposal to rent the Member's Points for a fee is
 15 coming from and/or authorized by Diamond, and is, accordingly, permissible under
 16 the terms of Diamond's agreements with Collection Members and the governing
 17 documents for the Member's Collection.

18 57. Collection Members who entered into agreements with Defendants have
 19 received notices indicating that their Points have been used to make reservations for
 20 non-Collection Members. These notices have been coming from Defendant VMG
 21 Resorts, even though the sales calls have all been coming from Exchange Points, PR
 22 Rewards, or Owners' Extras. In fact, one Collection Member was provided copies of
 23 the contract the Member eventually signed through an online portal hosted by the
 24 website for Defendant VMG Resorts (specifically, at the URL
 25 <https://www.vmgportal.com/vmg-contracts/epc-diam.php>).

26 58. Upon information and belief, the solicitations described above represent
 27 only a small percentage of the actual solicitations made by that company to
 28 Collection Members. Diamond only learns about such solicitations when such

1 Members come to Diamond with their concerns, which will only be a small subset of
 2 those actually contacted.

3 59. Upon information and belief, most, if not all, of the Collection Members
 4 who have paid Defendants upfront fees have received no proceeds from the purported
 5 rental of their Points.

6 60. Upon information and belief, Defendants are privy to unauthorized
 7 inside information about Collection Members and are using that information to
 8 target members who have large reserves of unused Points.

9 **D. Injuries to Diamond**

10 61. Defendants' conduct has caused, and is causing, direct and immediate
 11 harm to Diamond. This harm has taken multiple forms.

12 62. For instance, Defendants' conduct is causing irreparable harm to
 13 Diamond's relationship with Collection Members. Collection Members are being led
 14 to believe that the programs Defendants are trying to get them to enroll in for a hefty
 15 fee are coming from, or at least affiliated with, Diamond. When those programs do
 16 not work out as promised – and, in particular, when the Collection Member does not
 17 get its up-front payment returned, let alone the profits promised – that harms the
 18 goodwill Diamond has built up with Collection Members. In addition, Defendants'
 19 representations that the transactions they are proposing to Collection Members are
 20 authorized and permissible are undermining Diamond's ability to manage the
 21 Collections.

22 63. In addition, Defendants' unauthorized commercial rental of Resort
 23 accommodations is diverting vacationers from Diamond to Defendants. The persons
 24 renting accommodations within the Resorts through Defendants could otherwise only

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1 participate in such a vacation stay either by (a) purchasing Points, or (b) renting the
 2 accommodations from Diamond.³

3 64. Finally, Defendants' conduct has required Diamond to expend
 4 significant resources uncovering their schemes and attempting to undo the damage
 5 they are causing to Diamond's relationship with the Collection Members.

6 D. **Diamond's Attempts to Resolve the Issues**

7 65. On January 4, 2019, Diamond, through its undersigned counsel, sent a
 8 cease-and-desist letter to Defendants Kyle Brown and Martin Brown regarding the
 9 conduct described herein. A true and correct copy of that correspondence is attached
 10 hereto as **Exhibit 20**. In that letter, Diamond asked that Defendants cease all
 11 infringing activity and provide a thorough accounting of their activities with regard
 12 both to Collection Members and selling access to the Resorts.

13 66. Shortly thereafter, Defendant Kyle Brown reached out to undersigned
 14 counsel. Defendant Kyle Brown represented that Defendant Exchange Points was no
 15 longer an ongoing business. At the time this representation was made, Exchange
 16 Points still had an active website that advertised affiliation with Diamond and was
 17 listed as an active business in both Missouri and Florida. (Later the references to
 18 Diamond on the Exchange Points website were removed.)

19 67. In discussions with undersigned counsel, Defendant Kyle Brown further
 20 represented that his businesses had stopped actively soliciting Diamond's Collection
 21 Members for the use of their Points, explaining that they no longer considered that
 22 line of business to be profitable. No proof was furnished to support that
 23 representation. In fact, Diamond has continued, as of the date of this filing, to
 24 receive reports from Collection Members about the conduct described herein.

25
 26 ³ Because the persons renting the Resort accommodations through Defendants
 27 are not timeshare owners, they would not be able to make reservations through an
 28 exchange company such as II.

1 68. In addition, Defendant Kyle Brown pointedly refused to direct his
2 businesses to stop engaging in the second part of the schemes described herein – the
3 use of Member Portal Accounts to book stays at resorts for Defendants' customers.
4 While Defendant Kyle Brown acknowledged that his businesses had no right to
5 access Diamond's internal booking system through Collection Members' accounts or
6 Member Portal Accounts, he said the fault for that rested exclusively with the
7 Collection Members themselves, whom he accused of falsely representing that they
8 were permitted to provide Defendants with such access. As of this writing, the
9 website for Defendant VMG Resorts continues to display images of Resorts and
10 promote access to those Resorts through VMG Resorts.

11 69. Finally, Defendant Brown refused Diamond's demand that he identify
12 (a) the Collection Members who provided his businesses with access to their Points,
13 (b) the dates and locations of every vacation stay at a Resort that his businesses
14 facilitated or received compensation for facilitating, or (c) the information he and/or
15 his businesses acquired about Collection Members' accounts and Member Portal
16 Accounts and how they acquired it.

17 70. On information and belief, the schemes described herein are still being
18 enacted, notwithstanding any representations that have been made.

COUNT I
(Trademark Infringement— 15 U.S.C. §1114)

21 71. Diamond repeats and realleges the allegations set forth in Paragraphs 1
22 through 70 above as if set forth fully herein.

23 72. Diamond owns the exclusive rights to the “Diamond Resorts” name, as
24 well as all of the Diamond Marks listed above. At no time did Diamond authorize
25 Defendants to use any of Diamond’s marks.

26 73. Notwithstanding Diamond's well-known and prior common law and
27 statutory rights in the Diamond Marks, Defendants have, with actual and
28 constructive notice of those rights, used those marks in interstate commerce in

1 conjunction with both (a) their marketing of their various commercial rental
2 programs for Collection Members' Points, and (b) their marketing and sale of access
3 to the Resorts.

4 74. Defendants' use of the Diamond Marks without the authorization of
5 Diamond is not only likely to deceive and cause confusion among those targeted by
6 the deceptive sales communications, but actually has caused such confusion. In
7 particular, Collection Members have been deceived by Defendants' use of the
8 Diamond Marks into believing that the telephone solicitations they have received
9 from Defendants are coming from Diamond itself, or else an entity affiliated with
10 Diamond. In addition, the consumers who have reserved accommodations at the
11 Resorts through Defendants have been deceived by Defendants' use of the Diamond
12 Marks into believing that Defendants are authorized wholesale distributors of
13 vacation stays at the Resorts.

75. Defendants' conduct has caused, and, if not enjoined by this Court, will continue to cause, irreparable harm to Diamond in that it is undermining Diamond's relationship to the Collection Members and causing Diamond to lose control of its brand.

18 76. Defendants' conduct has caused, and, if not stopped, will continue to
19 cause, monetary injury to Diamond in the form of both the diversion of business from
20 Diamond to Defendants, and the taking on of the costs of investigating, and
21 attempting to counteract, Defendants' conduct. The amount of such economic
22 damages is not presently ascertainable, but will be proven at trial.

COUNT II

(False Designation of Origin – 15 U.S.C. § 1125(a)(1)(A))

25 77. Diamond repeats and realleges the allegations set forth in Paragraphs 1
26 through 76 above as if set forth fully herein.

1 78. Diamond owns the exclusive rights to the "Diamond Resorts" name, as
 2 well as all of the Diamond Marks listed above. At no time did Diamond authorize
 3 Defendants to use any of Diamond's marks.

4 79. Defendants have engaged in a campaign of telephonic advertisements in
 5 which they have falsely represented to Collection Members that the commercial
 6 rental programs they are attempting to get the Collection Members to enroll in are
 7 affiliated with Diamond, and, therefore, permissible. These false representations
 8 have taken the form not only of unauthorized use of the Diamond Marks, but also
 9 claims to be affiliated with Diamond's equity sponsors or with exchange companies
 10 with which Diamond might do business, as well as more general suggestions that the
 11 solicitations are coming from an entity with insider knowledge of, and authority over,
 12 the Collection Member's Points.

13 80. In addition, Defendants, in selling and facilitating occupancy of
 14 accommodations within the Resorts, have falsely held themselves out as authorized
 15 wholesale distributors of vacation stays at the Resorts. They have done this through
 16 the use the Diamond Marks, as well as separate false promises and warranties they
 17 have made.

18 81. Such false claims of affiliation with Diamond are not only likely to
 19 deceive and cause confusion among the targets of the deceptive sales
 20 communications, but actually have caused such confusion. In particular, Collection
 21 Members have been deceived by Defendants' false representations into believing that
 22 the telephone solicitations they have received from Defendants are coming from
 23 Diamond itself, or else an entity affiliated with, or authorized to do business on
 24 behalf of, Diamond. In addition, the consumers who have reserved stays at the
 25 Resorts through Defendants have been deceived by Defendants' false representations
 26 into believing that Defendants are authorized wholesale distributors of vacation
 27 stays at the Resorts.

28 82. These false representations have been made in interstate commerce.

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83. Defendants' conduct has caused, and, if not enjoined by this Court, will continue to cause, irreparable harm to Diamond in that it is undermining Diamond's relationship to the Collection Members.

84. Defendants' conduct has caused, and, if not stopped, will continue to cause, monetary injury to Diamond in the form of both the diversion of business from Diamond to Defendants, and the taking on of the costs of investigating, and attempting to counteract, Defendants' conduct. The amount of such economic damages is not presently ascertainable, but will be proven at trial.

COUNT III

(False Advertising – 15 U.S.C. § 1125(a)(1)(B))

85. Diamond repeats and realleges the allegations set forth in Paragraphs 1 through 84 above as if set forth fully herein.

86. Defendants have engaged in a campaign of telephonic advertisements directed at Collection Members in which, in an effort both to extract payment from Collection Members and gain control of the Members' Points for commercial rental, Defendants are making a series of material misrepresentations to Collection Members. In particular, Defendants are falsely representing (a) that they are affiliated with and/or acting on behalf of Diamond, (b) that the programs in which they are attempting to enroll Collection Members are permissible under the terms of those Members' agreements with Diamond and the governing documents for their Collection, and (c) that the Collection Member will receive significant monetary returns for surrendering control of their Points to Defendants.

87. Defendants are likewise making a series of material misrepresentations in connection with promoting their rentals of Resort accommodations. In particular, Defendants are false representing that they are authorized wholesale distributors of vacation stays at the Resorts and authorized to sell access to such Resorts.

88. These false representations have been made in interstate commerce.

89. These false representations have a tendency to deceive, and have, in fact, deceived, both Collection Members and the customers to whom Defendants are selling and facilitating occupancy to accommodations within the Resorts.

90. These false representations are material and are likely to influence, and have, in fact, influenced, purchasing decisions of both Collection Members and Defendants' customers.

91. Defendants' conduct has caused, and, if not stopped, will continue to cause, irreparable harm to Diamond in that it is undermining Diamond's relationship to Collection Members and causing Diamond to lose control of its brand.

92. Defendants' conduct has caused, and, if not stopped, will continue to cause, monetary injury to Diamond in the form of both the diversion of business from Diamond to Defendants, and the taking on of the costs of investigating, and attempting to counteract, Defendants' conduct. The amount of such economic damages is not presently ascertainable, but will be proven at trial.

COUNT IV

(Deceptive Trade Practices – Nev. Stat. §§ 598, 598A et seq.)

93. Diamond repeats and realleges the allegations set forth in Paragraphs 1 through 92 above as if set forth fully herein.

94. Defendants have, and are, engaged in a series of deceptive practices designed to (a) acquire illicit control over Collection Members' Points, and (b) profit from selling and facilitating occupancy of accommodations within the Resorts.

95. Those practices have involved (a) falsely claiming or implying affiliation with Diamond to Collection Members, (b) falsely representing to Collection Members that there are certain “problems” with their Collection accounts that Defendants are authorized to help them with, (c) falsely promising to Collection Members significant returns in exchange for providing an upfront fee for surrendering control of their Points, and (d) falsely representing to its customers that they are authorized wholesale distributors of vacation stays at the Resorts.

96. Defendants' conduct constitutes engagement in "trade or commerce" as
defined by Nev. Rev. Stat. § 598A.020.

3 97. Defendants' conduct has caused, and, if not enjoined by this Court, will
4 continue to cause, irreparable harm to Diamond in that it is undermining Diamond's
5 relationship to Collections Members and causing Diamond to lose control of its brand.

6 98. Defendants' conduct has caused, and, if not stopped, will continue to
7 cause, monetary injury to Diamond in the form both of the diversion of business from
8 Diamond to Defendants, and of the costs of investigating, and attempting to
9 counteract, Defendants' conduct. The amount of such economic damages is not
10 presently ascertainable, but will be proven at trial.

COUNT V

(Common Law Conversion)

99. Diamond repeats and realleges the allegations set forth in Paragraphs 1 through 98 above as if set forth fully herein.

100. Diamond, through its affiliates, holds the exclusive right to engage in the commercial rental of Resort accommodations through the use of Points under the governing documents for the Collections.

18 101. Defendants have been, without authorization, selling and facilitating
19 occupancy of accommodations within the Resorts. They have been doing so through
20 obtaining unauthorized access to Diamond's online reservations system for Collection
21 Members, and making reservations for their customers at Resorts via the accounts of
22 Collection Members and via the Member Portal Accounts.

23 102. Defendants have engaged in such conduct with malice, that is, with
24 knowledge that they lacked any authority to access Diamond's online reservations
25 system or to sell and facilitate access to accommodations within the Resorts and,
26 thus, full awareness that such conduct was contrary to Diamond's ownership rights.

103. Defendants' conduct has caused, and, if not stopped, will continue to cause, monetary injury to Diamond in the form of the diversion of rents from Diamond to Defendants.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that the Court enter an Order against Defendants as follows:

1. Preliminarily and permanently enjoining Defendants, their officers, agents, servants, employees and attorneys, and all those in active concert or participation with them, from:
 - a. using any Diamond Marks, or otherwise engaging in any further advertising or promotion – whether in print, email, telephonically, on their websites, or otherwise – that *either* (a) suggests an affiliation with Diamond, *or* (b) suggests that any of Defendants is authorized as a wholesale distributor of vacation stays at the Resorts or has authority to facilitate or otherwise sell access to the Resorts;
 - b. holding themselves out as authorized depositories, managers, or renters of Points; and
 - c. using, or attempting to use, Collection Members' Points or Member Portal Accounts obtained through their schemes to sell and/or facilitate access to vacation stays at the Resorts;
 2. Awarding Diamond disgorgement of Defendants' profits;
 3. Awarding reasonable attorney's fees pursuant to 15 U.S.C. § 1117 and Nev. Rev. Stat. § 41.600;
 4. Awarding Diamond its costs in bringing the action;
 5. Awarding Diamond punitive damages; and

6. Awarding any further relief that this Court deems just and proper.

Dated: February 6, 2019.

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